HWEE SENG ELECTRONICS (PG.) SDN. BHD.

v.

CHENG KOOI CHEH

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. D3-23-86-88]
22 NOVEMBER 1990

CIVIL PROCEDURE: *Striking off defence - Order 18 r. 19 RHC 1980 - Order 14 - Estoppel - Set off not specifically pleaded - Whether payment of smaller sum good discharge of the debt.*

This is an appeal by the plaintiff against the decision of the Senior Assistant Registrar who refused to grant the plaintiff's application for the following orders:

(1) that the defence dated 29 March 1988, be struck off under O. 18 r. 19 of the High Court 1980;

(2) that the plaintiff be at liberty to enter final judgment under O. 14 Rules of the High Court 1980, against the defendant for payment of the sum of RM152,042.15.

The plaintiff claimed against the defendant a sum of RM152,042.15 being the price of goods sold and delivered to the defendant at the defendant's request. The defendant in the statement of claim denied the plaintiff's claim and contended that it was agreed between the plaintiff and the defendant that the defendant would pay the plaintiff a sum of RM150,000 and the plaintiff would accept the amount as full and final settlement of whatever amount outstanding to the plaintiff. The defendant said that the said sum was collected by the plaintiff's representative. The defendant further claimed in his statement of defence that the plaintiff had agreed to give the defendant a 3% incentive commission on all purchases from the plaintiff. He said the total amount of such commission was RM167,675.34 which he said was to be reduced by both parties to RM152,042.15 leaving a balance of RM150,000 due to the plaintiff which had been paid to the plaintiff's representative. The defendant said the plaintiff was now estopped from making the present claim for the sum of RM152,042.15.

Counsel for the plaintiff submitted that the defence did not specifically plead the plea of set-off or a counterclaim in the statement of defence.

Held:

[1] The defendant has no defence to the plaintiff's claim and the plaintiff is entitled to summary judgment.

[2] The defendant is not entitled to set off the amount of commission against the plaintiff's claim because the defence of set-off has not been expressly pleaded in the statement of defence.

[Appeal allowed with costs.]

Cases referred to:
Gooi Seang Tuck v. Tan Peng Loon [1959] 25 MLJ 153 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 14, O. 18 r. 19

For the plaintiffs - L.H. Chua; M/s. L.H. Chua
For the defendant - M.C. Tan; M/s. M.C. Tan & Co.

JUDGMENT

Zakaria Yatim J:

This is an appeal by the plaintiff against the decision of the Senior Assistant Registrar who refused to grant the plaintiff's application for the following orders:

(i) that the defence dated 29 March 1988 filed herein be struck off under O. 18 r. 19, Rules of the High Court 1980;

(ii) that the plaintiff be at liberty to enter final judgment under O. 14, Rules of the High Court 1980 against the defendant for payment of the sum of RM152,042.15 together with interest at 8% per annum from the date of judgment till date of realisation and all costs of and incidental to the application.

The plaintiff is a private limited company incorporated in Malaysia having its place of business at No. 13-1, Jalan Raja Laut, Kuala Lumpur. The defendant is the registered sole proprietor of Sooi Lee Traders having its principal place of business at No. 388, Jalan Pahang, Setapak, Kuala Lumpur.

The plaintiff's claim against the defendant is for a sum of RM152,042.15 being the price of goods sold and delivered to the defendant at the defendant's request. Despite repeated demands made by the plaintiff, the defendant failed to pay the said sum.

In its statement of defence, the defendant denies the plaintiff's claim and contends that it was agreed between the plaintiff and the defendant that the defendant would pay the plaintiff a sum of RM150,000 and the plaintiff would accept the amount as full and final settlement of whatever amount outstanding to the plaintiff. The defendant says that the said sum was collected by the plaintiff's representative, one Chia Lin Pion, who acknowledged receipt of same. It was also agreed that the plaintiff would remit to the defendant credit notes for sums waived. The defendant alleges that the plaintiff had not done so.

It was further agreed that the plaintiff would give the defendant 3% incentive commission on all purchases from the plaintiff. The total amount of such commission was RM167,675.34. Both the plaintiff and the defendant agreed to reduce the figure to RM152,042.15 leaving a balance of RM150,000 due to the plaintiff which was paid to the plaintiff's representative. The defendant says that the plaintiff is now estopped from making the present claim. Annexed to the statement of defence is a letter dated 22 January 1986 addressed to the defendant. The letter is reproduced below:

M/s. Sin Lee Traders
388, Jalan Pahang,
Setapak,
Kuala Lumpur.

Dear Sir,

We have hereby authorised Chia Lin Pion I/C No. 5196060 to collect the outstanding amount of RM302,042.15 owing us on goods delivered and sold to you on your request.

Kindly issue all payment in cheque to Hwee Seng Electronics Sdn. Bhd.

Your co-operation will be much appreciated.

Thank you.

Yours faithfully,
Hwee Seng Electronics Sdn. Bhd.

At the bottom of the letter there is a handwritten note by Chia Lin Pion and signed by him. The handwritten note states:

> I agree to collect RM150,000 (one hundred and fifty thousand dollars) in full settlement of the above sum mentioned.
>
> Chia Lin Pion
> Sgd. 27/5/86.

The plaintiff does not dispute that the RM150,000 had been paid by the defendant. What they are claiming is the balance sum of RM152,042.15 together with interest.

Mr. L.H. Chua, Counsel for the plaintiff submitted that the defence did not have a counterclaim or a set-off in the statement of defence. I agree with him. In the statement of defence the defence raises the question of estoppel. I fail to understand how estoppel becomes relevant in this case. Upon reading the whole statement of defence the defendant appears to rely on a plea of set-off in respect of the RM152,042.15. But the plea of set-off is not specifically pleaded. The plaintiff denies that they agreed, orally or in writing to pay the defendant incentive commission at 3% on all purchases from the plaintiff. Mr. H.L. Chua submitted that the defendant's claim for incentive commission for the years 1982 and 1983 was time-barred. There is only the claim for 1984 but the amount due for that year is not known. In any event the defendant is not entitled to set-off the amount of the commission against the plaintiff's claim because he has not expressly pleaded a defence of set-off in the statement of defence.

Assuming that the defendant is entitled to claim incentive commission for 1984 the amount must be far less than RM167,675.34. Even if he is entitled to set-off the commission money, this money is far less than the amount claimed by the plaintiff. In *Gooi Seang Tuck v. Tan Peng Loon* [1959] 25 MLJ 153, it was decided that payment by a debtor of a smaller sum in satisfaction of a larger sum is not a good discharge of the debt.

Therefore the defendant had not satisfied the debt.

In my opinion the defendant has no defence to the plaintiff's claim and the plaintiff is entitled to summary judgment as prayed in the statement of claim. I accordingly allow the appeal with costs.

Also found at [1992] 4 CLJ 1857